S T A T E O F N E W Y O R K

5904

2013-2014 Regular Sessions

I N A S S E M B L Y

March 8, 2013

Introduced by M. of A. GABRYSZAK -- read once and referred to the Committee on Ways and Means

AN ACT to amend the public service law and the tax law, in relation to creating the clean fuel and job creation tax credit to incentivize power plants to repower existing facilities or construct new facilities which use cleaner burning fuels or add significant pollution control technologies

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The public service law is amended by adding a new section 73 to read as follows:

S 73. COORDINATION WITH CERTAIN PROVISIONS OF THE TAX LAW. THE DEPARTMENT MAY REQUEST FROM THE DEPARTMENT OF TAXATION AND FINANCE A LIST OF ELECTRIC GENERATING FACILITIES THAT HAVE BEEN GRANTED A CLEAN FUEL AND JOB CREATION TAX CREDIT AS SUCH CREDIT IS DESCRIBED IN SECTION THIRTY-EIGHT OF THE TAX LAW. THE LIST SHALL INCLUDE THE LOCATION OF THE FACILITY RECEIVING THE CREDIT, A DESCRIPTION OF THE PROJECT TO WHICH THE CREDIT RELATES, THE AMOUNT OF THE CREDIT, AND THE TAX YEAR FOR WHICH THE CREDIT WAS GRANTED.

S 2. The tax law is amended by adding a new section 38 to read as follows:

S 38. CLEAN FUEL AND JOB CREATION TAX CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER SUBJECT TO TAX UNDER ARTICLE NINE, NINE-A OR TWENTY-TWO OF THIS CHAPTER, WHICH IS AN ELECTRIC GENERATING FACILITY, SHALL BE ALLOWED A CREDIT AGAINST SUCH TAX, PURSUANT TO THE PROVISIONS REFERENCED IN SUBDIVISION (C) OF THIS SECTION. THE CREDIT SHALL BE ALLOWED FOR CERTAIN INVESTMENTS MADE BY ANY MAJOR ELECTRIC GENERATING FACILITY IN THE STATE SUCH AS REPOWERING PROJECTS, QUALIFIED ENERGY INFRASTRUCTURE INVESTMENTS, AND QUALIFIED NEW CONSTRUCTION PROJECTS AS DESCRIBED IN THIS SECTION. THE CREDIT SHALL BE AS FOLLOWS:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(1) TWELVE AND ONE-HALF PERCENT OF THE FIRST ONE HUNDRED MILLION DOLLARS IN INVESTMENT;

(2) FIFTEEN PERCENT OF THE NEXT ONE HUNDRED MILLION DOLLARS IN INVESTMENT OR PORTION THEREOF; AND

(3) TWENTY PERCENT OF THE TOTAL INVESTMENT OVER AND ABOVE TWO HUNDRED MILLION DOLLARS.

(B) DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(1) "REPOWERING PROJECT" SHALL MEAN IMPROVEMENTS TO AN EXISTING MAJOR ELECTRIC GENERATING FACILITY THAT WILL ALLOW THE FACILITY, OR A NEW UNIT OR UNITS AT THE FACILITY, OR THE COMBINATION OF THE NEW UNIT OR UNITS AND THE FACILITY TO MEET THE RELEVANT ENVIRONMENTAL REQUIREMENTS CONTAINED IN SUBPARAGRAPHS (I), (II), (III) AND (IV) OF PARAGRAPH (B) OF SUBDIVISION FOUR OF SECTION ONE HUNDRED SIXTY-FIVE OF THE PUBLIC SERVICE LAW.

(2) "QUALIFIED ENERGY INFRASTRUCTURE INVESTMENT" SHALL MEAN ANY INVESTMENT NEEDED TO DELIVER A NEW FUEL SOURCE TO AN EXISTING ELECTRIC GENERATING FACILITY, REPLACE OR RETROFIT A BURNER OR TURBINE, UTILIZE ON-SITE RENEWABLE ENERGY GENERATION, OR ANY OTHER SUBSTANTIAL INVESTMENT THAT WILL HAVE A DIRECT IMPACT ON THE FACILITY'S ABILITY TO MEET THE ENVIRONMENTAL REQUIREMENTS CONTAINED IN SUBPARAGRAPHS (I), (II), (III) AND (IV) OF PARAGRAPH (B) OF SUBDIVISION FOUR OF SECTION ONE HUNDRED SIXTY-FIVE OF THE PUBLIC SERVICE LAW.

(3) "QUALIFIED NEW CONSTRUCTION PROJECT" SHALL MEAN CONSTRUCTING A NEW MAJOR ELECTRIC GENERATING FACILITY IN THE SAME LOCATION AS AN EXISTING FACILITY OR ON PROPERTY DIRECTLY ADJACENT OR CONTIGUOUS TO SAID PROPERTY, WHERE THE NEW FACILITY BY ITSELF OR IN COMBINATION WITH THE EXISTING FACILITY WILL ALLOW THE SITE AS A WHOLE TO MEET THE ENVIRONMENTAL REQUIREMENTS CONTAINED IN SUBPARAGRAPHS (I), (II), (III) AND (IV) OF PARAGRAPH (B) OF SUBDIVISION FOUR OF SECTION ONE HUNDRED SIXTY-FIVE OF THE PUBLIC SERVICE LAW.

(4) "MAJOR ELECTRIC GENERATING FACILITY" SHALL MEAN A MAJOR ELECTRIC GENERATING FACILITY AS DEFINED IN SECTION ONE HUNDRED SIXTY OF THE PUBLIC SERVICE LAW.

(C) A MAJOR ELECTRIC GENERATING FACILITY WHICH UNDERTAKES A REPOWERING PROJECT, A QUALIFIED ENERGY INFRASTRUCTURE INVESTMENT, A QUALIFIED NEW CONSTRUCTION PROJECT, OR OTHER INVESTMENT IN POLLUTION CONTROL EQUIPMENT OR ADDITIONAL ENERGY INFRASTRUCTURE WITH THE GOAL OF MEETING RELEVANT ENVIRONMENTAL REQUIREMENTS SHALL BE ALLOWED TO CLAIM A CREDIT UNDER THIS SECTION.

S 3. The tax law is amended by adding a new section 187-s to read as follows:

S 187-S. CLEAN FUEL AND JOB CREATION TAX CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY-EIGHT OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY SECTIONS ONE HUNDRED EIGHTY-THREE AND ONE HUNDRED EIGHTY-FOUR OF THIS ARTICLE.

(B) APPLICATION OF CREDIT. IN NO EVENT SHALL THE CREDIT UNDER THIS SECTION BE ALLOWED IN AN AMOUNT WHICH WILL REDUCE THE TAX PAYABLE TO LESS THAN THE APPLICABLE MINIMUM TAX FIXED BY SECTION ONE HUNDRED EIGHTY-THREE OR ONE HUNDRED EIGHTY-FOUR OF THIS ARTICLE. IF, HOWEVER, THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SECTION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT NOT DEDUCTIBLE IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

S 4. Section 210 of the tax law is amended by adding a new subdivision 46 to read as follows:

46. CLEAN FUEL AND JOB CREATION TAX CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY-EIGHT OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(B) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR MAY NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE AMOUNT PRESCRIBED IN PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR WILL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST WILL BE PAID THEREON.

S 5. Section 606 of the tax law is amended by adding a new subsection (vv) to read as follows:

(VV) CLEAN FUEL AND JOB CREATION TAX CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY-EIGHT OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(2) APPLICATION OF CREDIT. IF THE AMOUNT OF THE CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR EXCEEDS THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS WILL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST WILL BE PAID THEREON.

S 6. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding a new clause (xxxv) to read as follows:

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| (XXXV) CLEAN FUEL AND JOB CREATION CREDIT UNDER SUBSECTION (VV) | AMOUNT OF CLEAN FUEL AND JOB CREATION CREDIT UNDER SUBDIVISION FORTY-SIX OF SECTION TWO HUNDRED TEN |

S 7. This act shall take effect on the ninetieth day after it shall have become a law.